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P A P E R S
towards a biblical mind

Uniformity or mutuality?

The new equality law in Christian perspective

by *Julian Rivers*

*For really I think that the poorest he that is in England hath a life to live,
as the greatest he.*
Col. Thomas Rainsborough¹

*... alas, in actual life one laces the outer garment of distinction so tightly
that ... the inner glory of equality never, or very rarely, shines through.*
Søren Kierkegaard²

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Writing group

Denis Alexander PhD
John Coffey PhD
Caroline Eade MA
Julian Rivers PhD
Paul Mills PhD
Peter Sanlon MPhil
Michael Schluter PhD
Christopher Townsend MA
Alison Watkin PhD
Christopher Watkin PhD
Margaret Wilson BA DipTh

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The Jubilee Centre
3 Hooper Street, Cambridge CB1 2NZ
Tel: 01223 566319
Fax: 01223 566359
E-mail: info@jubilee-centre.org
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Summary

The Equality Act 2010 was the last major piece of legislation to be passed under the British 'New Labour' Government. This paper explains briefly what equality law does as well as two groups of related problem cases. It sets out a biblical foundation for equality as well as a distinctive conception characterised more by mutuality than uniformity. Against this background, the paper argues that we need to combat an equality culture which trivialises religious and ethical disagreement, to reform the law to protect the pluralism of civil society and accommodate individuals, and to rediscover the real issue of equality, which is material, relational and spiritual poverty.

Introduction

For many British liberal commentators, the Equality Act 2010 'is not the end of the struggle for equality, but it is a new beginning.'³ It closes a chapter of a story which starts as far back as the Enlightenment, with its critique of aristocratic and priestly hierarchies and promotion of the 'self-evident truth' that all men (and sometimes even women) are equal. But it is important to distinguish the law itself from grand narratives of political development. And key to understanding the law is the idea of 'status discrimination'.

Status discrimination

The Equality Act 2010 is designed to provide comprehensive legal protection against the injustice caused by 'status discrimination'. This complex idea is best approached historically.

The mid-nineteenth century saw the dismantling of religious tests for political office, higher education and the professions, enabling religious minorities to access public life on equal terms.⁴ Religious differences were still hotly contested, but a consensus emerged that it was unjust for those differences to impact on legal rights. A similar consensus and dismantling of formal barriers for women took place in the early twentieth century.

The 1950s and 60s saw the focus shift from religion and gender to race, and from civil and political rights to socioeconomic interests. Racial prejudice was blocking equal access to education, training and employment, and the provision of housing, goods and services. Furthermore, the obstacles were not only explicit ('no blacks, Irish or gypsies') but more subtle and informal. Anti-discrimination law thus outlawed not only direct discrimination (the use of racial criteria to refuse access to a benefit) but also indirect discrimination (the adoption of unnecessary rules or practices making it harder to access a benefit), as well as harassment and victimisation. In the 1970s, this anti-discrimination model was extended to women as well.

The late 1990s saw the inclusion of a wide range of other 'protected characteristics' in pursuit of comprehensive and principled protection. Age, disability, religion or belief, and sexual orientation were added to the now familiar list of race, ethnicity, gender and marital status. Increasingly over the last decade, comprehensive protection from status discrimination has come to be seen as a requirement of fundamental justice, akin to other human rights.⁵ This was institutionalised in 2007 by the replacement of three previous equality commissions by a single Equality and Human Rights Commission with wide-ranging powers of enforcement.

¹ *The Putney Debates*, 1647.

² *Works of Love*, 1847.

³ Bob Hepple, *Equality: the new legal framework*, Hart Publishing, 2011, p.186.

⁴ Timothy Larsen, *Friends of Religious Equality: Non-conformist politics in mid-Victorian England*, Boydell Press, 1999.

⁵ The 12th Protocol to the European Convention on Human Rights gives protection against status discrimination in respect of 'any right set forth by law'. The UK is not a signatory to this Protocol.

Thus 'status' in this context not only embraces a wide range of personal characteristics, it also spans complex spectra of identity, belief and behaviour. Protection from discrimination is offered in respect of personal characteristics over which one has no control, acts considered worthy of social protection, lifestyle features constitutive of a person's sense of identity, and matters of belief and practice which are supposed not to impede participation in political and economic life. So a race discrimination case can involve anything from an irrational colour bar to an ethnic minority job quota or a school objecting to a 'cornrow' hairstyle.⁶

The new equality law is neither peculiarly British nor distinctively New Labour. Other Western liberal democracies have similar laws, which have also been stimulated by developments in the European Union.⁷ Over the last year, the Coalition Government has brought the Act into force with very few exceptions. The equality law movement is multinational and cross-party.

The problem cases

Given this complex spectrum, it is not surprising that tensions have emerged, particularly in respect of aspects of identity over which we have some control or responsibility: religious and sexual practice. Two sets of cases in the last few years have given rise to Christian concern. The first are the sexual orientation cases, in which individuals and organisations have suffered detriment on account of their adherence to a more traditional sexual ethic. For example, the magistrate who refused to place children for adoption with same-sex couples, the registrar who refused to conduct civil partnership ceremonies, the counsellor who refused to provide (sexual) counselling, the bishop who refused to appoint a homosexual youth worker, the hoteliers who refused rooms, and the Roman Catholic adoption agencies who have had public funding withdrawn on account of their refusal to consider same-sex couples as adoptive parents.

The second set of cases involve Christians who have been disciplined or dismissed on account of religious acts in the workplace. Here one thinks of the airline worker and nurses who wished to wear jewellery crosses, the van driver with a palm cross on his dashboard, the nurse who offered to pray with a patient, the teaching assistant who organised a school prayer meeting, and the local authority homelessness officer who advised a despairing client to pray.

It is worth remembering that in most secular accounts of the law, these two sets of cases are fairly minor footnotes. There is a vast body of material and litigation resulting from equality law that is not about sexual orientation or religion. For example, half the cases accepted by employment tribunals are about equal pay for men and women. In 2009/10, less than 1 per cent of all cases accepted by employment tribunals were about sexual orientation, and less than 5 per cent of these were successful (27 cases out of 75,710).⁸ Nevertheless, these cases not only have a chilling effect, they expose most starkly the underlying difficulties with equality law and the equality culture in which it is embedded.

Foundations of a biblical conception of equality

Equality is a basic political value for anyone who accepts that government exists for the sake of everyone within its jurisdiction, and that it should show everyone equal concern. Ronald Dworkin points out that the debate about equality is not so much about whether it is a valuable basic political principle or not – most people accept that it is – but about which *conception* of equality we should adopt.⁹

The Bible rarely uses the term 'equality' as such,¹⁰ using instead broader categories such as 'righteousness' and 'justice'. However, it has had a major impact on the idea of equality in Western political thought. This stretches from the crossing of social barriers within the early church and the medieval church's development of alternative anti-feudal communities, through the seventeenth-century Diggers and Levellers, to the abolition of slavery and the civil rights movement. As in so many other ways, the Enlightenment commitment to

equality has distinctively biblical roots.¹¹ Secular liberals need to start their story further back.

The Bible contains repeated instances of what we would now call 'formal equality', or equality before the law.¹² This is rooted in the character of God, who is the just judge of all.¹³ He shows no partiality or favouritism; he is no respecter of persons.¹⁴ Formal equality is entirely compatible with drawing distinctions. Creation is brought about by drawing distinctions of cosmic proportion. The priestly function is one of distinguishing the clean from the unclean, the holy from the profane. Isaiah and other prophets thundered against those who call evil good and good evil.¹⁵ Thus in Deuteronomy 25:1 judges are instructed to acquit the innocent and condemn the guilty, and Proverbs 17:15 tells us that God detests the precise reverse. The point is that human judges often take wrongful account of factors such as wealth, influence and personal friendship, and thus blur the only distinction which really matters: guilty or innocent.

'Substantive equality' is based on the idea that in some important sense human beings are the same and of the same value. Aristotle went no further than formal equality; for him, some people were slaves by nature.¹⁶ But a biblical conception of substantive equality is implicit in two great human identities: 'in Adam' and 'in Christ'.¹⁷ All human persons are created in God's image, and as descendants of one original couple are all 'in Adam'.¹⁸ Human beings are brothers and sisters in one human family. 'Am I not a man and a brother?' was rightly the abolitionists' motto. Sin is universal and so is our need of forgiveness and reconciliation with the God whose just rule over us we have rebelled against.¹⁹ Likewise, those who are 'in Christ' are new creations, inspired with God's Holy Spirit, enjoying his gifts, brothers and sisters in a new family, fellow-citizens of the kingdom of heaven, in which there is no distinction of race, rank or gender.²⁰

Israel's polity was in many ways egalitarian in tendency. God's covenant was made with the whole people. Israel was not to choose a king in imitation of surrounding nations, because God was their king who had entered into treaty with them, rescuing them from slavery and constituting them a people at Sinai.²¹ When they did succumb to cultural pressure, their king was to be one of them, moderate in power and wealth, subject to the law.²² The land was divided up according to tribes and families to ensure roughly proportionate access to the means of production.²³ The Jubilee system ensured a periodic reversal of debt to secure broad parity and break down accumulations of inherited property.²⁴

By contrast with human kings, the Kingdom of God is characterised by a Great Reversal. When Jesus' birth was announced to Mary, she sang of the God who brings down rulers from their thrones and who lifts up the humble; the God who fills the hungry with good things but sends the rich away empty.²⁵ Of course! Israel's national narrative told of a God who consistently chooses the weaker party.²⁶ This is not just what God does, it is *who he is*: the Son of God did not consider equality with God something to be clung on to, but took the nature of a slave.²⁷ He who was rich became poor, so that we through his poverty might become rich.²⁸ God made him who had no sin to be sin for us, so that in him we might become the righteousness of God.²⁹ And in the Kingdom he proclaims, the first will be last and the last first, the least will be greatest and the greatest least.³⁰ Those who exalt themselves will be humbled and the humble will be exalted.³¹ The blind see and those who think they can see are actually blind.³² It is this Great Reversal which grounds the claim that in Christ all human distinctions and hierarchies have been relativised: neither Jew nor Greek, neither slave nor free, neither male nor female, neither adult nor child, neither rich nor poor, neither fit nor disabled, neither 'moral' nor 'sinful'...

11 Jeremy Waldron, *God, Locke and Equality*, Cambridge University Press, 2002.

12 Exod. 23:6–8; Lev. 19:15. 13 2 Chr. 19:7.

14 Rom. 2:11; Eph. 6:9; Col. 3:25; 1 Pet. 1:17. 15 Isa. 5:20.

16 *Nichomachean Ethics* V.3; *Politics* I.5.

17 Rom. 5:12–21. 18 Gen. 3:20; Acts 17:26. 19 Rom. 3:23–24.

20 1 Cor. 12:12–13; Gal. 3:26–28; Col. 3:11.

21 1 Sam. 8:10–18.

22 Deut. 17:14–20. 23 Deut. 3:12–20; Josh. 13–22.

24 Lev. 25; Amos 6:1–7; 2:6; 1 Kgs. 21; Isa. 5:8–10; Mic. 2:1–2.

25 Luke 1:52–53. 26 Mal. 1:2–3. 27 Phil. 2:6. 28 2 Cor. 8:9, 13.

29 2 Cor. 5:21.

30 Matt. 19:30; 20:16; Mark 9:35; Luke 13:30; Luke 9:48. This saying is applied to a wide range of contexts of hierarchy: rich/poor, leader/follower, lifelong believer/deathbed convert, adult/child, Jew/Gentile.

31 Luke 14:11; 18:14. See also Luke 16:25. 32 John 9:41. See also 1 Cor. 1:27–28.

6 *The Guardian*, 17 June 2011. It is also clear that in law 'sexual orientation' extends to matters of lifestyle and sexual practice: *R(Amicus) v Secretary of State for Trade and Industry* [2007] ICR 1176.

7 Treaty of Amsterdam 1997, article 13.

8 Hepple, *op. cit.* n. 2, 156–8.

9 Ronald Dworkin, *Sovereign Virtue*, Harvard University Press, 2000.

10 In the NT, the adjective *isos* means 'the same as', or 'equal to' (e.g. John 5:18; Phil. 2:6), but the abstract noun *isotes* can mean either equality or equity/fairness (cf. NIV translations of 2 Cor. 8:14 and Col. 4:1).

Reading the Bible with discrimination

At this point, it is tempting to shut the Bible and buy into the modern equality agenda. But one needs to read the Bible more closely to see how difference is handled in the present age. In broad terms, the answer lies not in its obliteration, but in its transformation to the purposes of mutual service. The underlying logic is perhaps clearest at 1 Corinthians 12. Our unity in Christ is what enables us not simply to celebrate diversity but to use the strengths of one to serve the other. So in the church, there is 'neither Jew nor Greek', yet Pentecost saw God's salvation being proclaimed in a multitude of languages, and, in an early example of reverse discrimination, one of the first acts of the apostles was to make special provision for Greek widows.³³ In this respect, Paul was 'all things to all people' that he might win over many.³⁴ All nations and languages will be represented in heaven.³⁵

Other distinctions are nuanced in different ways. So the master-slave relationship is not denied. The most pressing ethical concern is for masters to be good masters and slaves to be good slaves. But both masters and slaves are reminded that with God there is no favouritism.³⁶ Both are reminded that they are fellow-slaves of God.³⁷ In Christ a slave becomes a brother.³⁸ Slaves are encouraged to seek their freedom from their earthly masters if possible and slave-trading is condemned.³⁹ The future hope of both masters and slaves is to be brought into the 'glorious freedom of the sons of God'.⁴⁰ There is no slavery in heaven.

The New Testament speaks of transformation in gender relations as well.⁴¹ Husbands are to love their wives, wives to submit to their husbands, yet that is embedded in a context in which we are all to love one another as Christ loved us and submit to one another also.⁴² The unity of husband and wife speaks of a deep mystery – a future 'one flesh' unity of Christ and his Church.⁴³ To suppose that marriage in this age could be anything other than a faithful relationship between a man and a woman would be to force a resolution of difference that only God can bring about at the end of time. Only in heaven will we be like the (ungendered) angels.⁴⁴

Riches are not to be a cause of favouritism, or poverty a ground for harsh treatment,⁴⁵ but nor is the distinction to be obliterated. Rather, the Great Reversal should lead rich Christians to support those in need, so that in turn when the needy become rich, they can support the impoverished. The early church was not characterised by primitive communism but by overwhelming generosity.⁴⁶ As Paul asked the Corinthians to be more intentional about their financial support for the poverty-struck church in Jerusalem he insisted that he was not seeking to reverse their fortunes – simply that there should be mutual support and thus 'equality'.⁴⁷ After all, what ultimately counts is our treasure in heaven.⁴⁸

In all this, we must not lose sight of the fact that the Bible speaks of two human identities, not one. What impact should the Great Reversal have on a society of those whose unity is in Adam and not in Christ? Here we have to note both Christ's command to be salt and light,⁴⁹ and also the difference between different social spheres. Clearly, the Bible does not value religious diversity in the same way as it values (for example) the gender difference. The biblical category for religious diversity is idolatry.⁵⁰ But a commitment to religious equality as a *political* principle emerges from the New Testament distinction between church and society. 1 Corinthians 5:9–13 is the classic text. Paul demarcates spheres of judgement in which doctrinal and ethical deviation should be ignored ('outside the church') and dealt with ('in the church'). The distinction between the two identities is expressed institutionally in the difference between church and society. This allows for Christian influence without political imposition.⁵¹

So both formal and substantive equality are compatible with the basic Christian story about the nature and value of humankind. However, the conception of equality which emerges from the Bible is more about what happens to society when the church lives faith-

fully in the light of the coming relativisation of human hierarchies. The *leitmotif* is mutuality not uniformity, seeing difference as a ground for service, rather than flattening out human distinctiveness. Both our origin in Adam and our hope in Christ make it possible for difference to be valued without it becoming a cause of oppression.

In this light, there is a certain utopianism about the modern equality movement. From a theological point of view, its eschatology tends to be overrealised. It expresses a longing both to transcend difference and to affirm it, which as the fate of 'multiculturalism' in Western politics shows can be unstable and even paradoxical. The resolution is only offered us in Christ and only fulfilled in our transformation at the end of time.

Three main challenges of the new equality law

1 Combat a trivialising equality culture

It is common to bemoan the failure of the law to create a 'culture of equality' in the workplace, but in many ways there is a powerful new culture of equality. This is evidenced in the rise of 'discrimination' as a general term of criticism (rather like 'intolerance' for 60s liberals). Equality culture asks 'who are you to judge?' but engages in judgement itself by being hostile to speech and action that draws distinctions of which it disapproves.

There is no hint of relativism or moral uncertainty about the value of human beings in the Bible. One suspects that the 'equality' label is often used precisely because of its malleability in an age of moral uncertainty. I may not know how to treat you, but at least I am treating you the same as everyone else. But the Bible is substantively committed on the question of what it is about human beings that makes them equal: it is their equal worth. 'Worth' points back to a biblical word such as 'glory', suggesting both the weight, value and worthiness of God, but also of humankind – men and women – made in his image,⁵² and capable of transformation into the likeness of his Son.⁵³ This suggests that we should not be saying that 'equality' is our foundational political value, but 'equal human worth'.⁵⁴

Equality culture finds difference problematic. For example, Bob Hepple criticises the Government for excluding children from the remit of age discrimination law.⁵⁵ Let us assume that we agree on the appropriate legal regime under which children flourish, and let us assume that it is significantly different from the law for adults. We could still call this body of law 'equality law' because equal worth does not require identical treatment. But by calling it a matter of equality, one switches on the assumption that the ways in which children are treated differently from adults calls for special justification. Given widespread concerns about the premature commercialisation and sexualisation of children, one might think that equality with adults is precisely the wrong starting point.

The equality culture can also mislead us into suppressing difference where it should be accommodated. In a context of multiple religions and none, suppressing all overt signs of religious commitment in the name of religious neutrality seems an easy solution. And so we find ourselves in the paradoxical situation where anxious employers think that equality law requires them to suppress religious difference in the workplace when in fact it imposes new obligations (admittedly, not very onerous ones) to accommodate it.⁵⁶

And equality culture becomes especially pernicious when it absolves us of moral responsibility. The protected characteristics of equality law range from aspects of our lives over which we have absolutely no control to those bound up with complex combinations of identity, belief and behaviour for some elements of which we must take responsibility. In practice, the law does treat these things differently, but the culture tends to assume that all choices and actions linked to a protected characteristic must now be socially approved. And the law does not help by symbolically wrapping all the protected characteristics into one super-law, so giving spurious credence to the sort of ethical slippage which equates an argument against sexual promiscuity with denying a home to a Bengali family.

33 Acts 2:6; 6:1–7. 34 1 Cor. 9:22.

35 Rev. 7:9. See further, 'Multiculturalism', *Cambridge Papers* Vol.10 No.4, 2001.

36 Eph. 6:9 (masters); Col. 3:25 (slaves). 37 Eph. 6:6, 9. 38 Philem. 16.

39 1 Cor. 7:21; 1 Tim. 1:10. 40 Rom. 8:21.

41 See Michael Ovey, 'Equality but not symmetry', *Cambridge Papers* Vol.1 No.2, 1992.

42 Eph. 5:25, 22; 5:1, 21. 43 Eph. 5:32. 44 Luke 20:35–36. 45 Jas. 2.

46 Acts 4:34–35. 47 2 Cor. 8:1–15. 48 Matt. 6:19–21.

49 Matt. 5:13–16.

50 e.g. Acts 17:16; 1 Cor. 12:2.

51 This idea also grounds Augustine's doctrine of Two Cities, which is foundational for Western political liberty.

52 Ps. 8.

53 2 Cor. 3:18.

54 Duncan Forrester, *On Human Worth*, SCM, 2001; Nicholas Wolterstorff, *Justice: Rights and Wrongs*, Princeton Univ. Press, 2010; and *Justice in Love*, Eerdmans, 2011, also uses the idea of 'worth'.

55 Bob Hepple, *Equality: the new legal framework*, Hart Publishing, 2011.

56 *Cherif v G4S Security Services Ltd*, Employment Appeal Tribunal, 24 May 2011.

Equality culture trivialises and suppresses difference. The problem is that in most situations in which equality law applies, a person's 'status' should indeed be irrelevant. But it does not follow that all status-linked differences are irrelevant for all purposes. The challenge here is to recover a counterculture of moral and spiritual seriousness in the face of a legalistic flattening out and trivialisation of disagreement, in short to recover a commitment to *conscience*. We desperately need a serious, honest and respectful public debate about both sexual ethics and religious truth.

2 Reform the law

The two groups of high-profile cases noted near the start of this paper do not help Christians distinguish the problematic equality culture from the largely unproblematic equality law. Nevertheless, they also present us with the challenge of getting the law right. Two fairly minor changes to the law would go a long way to solving most of the problems.⁵⁷

The first change is a stronger recognition of autonomy on the part of civil society institutions. The Equality Act has various ways of accommodating different group identities, but it does so by way of limited exception. So a religious group is, as a starting point, bound by the same standards as the state or a large commercial company, except to the extent that it benefits from exceptions – which it does. Foster parents are also given an express exception so that the family can continue to be religious and prefer same-race children. But these exceptions are often narrowly interpreted as 'departures from equality'. There is a major risk that the state ethic creeps into society by way of contract compliance and public funding. In spite of the legal exceptions, the Roman Catholic adoption agencies had to comply with the new state ethic. All that one needs to do to create a totalitarian state is require that everything – including families, church life and the rest of civil society – is a matter of public concern, subject to a single dominant public ethic. A starting point would be for Christians to campaign for fuller exceptions from equality law, at least for all religious groups and families, even when they collaborate with state agencies in providing public services. Equality requires a greater degree of group pluralism.

Most of the cases in which secular employers have disciplined Christians involve indirect discrimination, i.e. the application of a rule or policy which is harder for Christians to comply with. Christians have tended to lose out as compared with other religions, because Christian ethics is more individualistic and conscience-based, whereas other faiths tend to have 'mandatory' collective rules of behaviour. The equality law of other jurisdictions, such as Canada, is much clearer that the right test here – as it is for disability in this country – is one of 'reasonable accommodation'.⁵⁸ One of the most disappointing aspects of the case of *Ladele* is that to start with a *modus vivendi* had apparently been reached by Islington Borough Council. The point about reasonable accommodation is that in a large metropolitan borough, it is not necessary for every single registrar to be willing to carry out civil partnership ceremonies. Only if the context is such that the service cannot otherwise be provided, is it right to insist that an office-holder choose between her conscience and her public duties.

57 I am not addressing here the set of problems caused by the legal assumption that a same-sex partnership is a form of marriage.

58 Encouragingly, this is also the view of the Equality and Human Rights Commission ('Latest News' 11 July 2011).

3 Resist distraction from the real issue of equality

There is no hint of any material–spiritual dualism in the Bible. So it is not sufficient to assert that human beings are equal in some spiritual sense and that this has no relevance to food and clothing. If we ask where the biblical writers are most exercised about inequality, the answer is clear: they care about poverty, understood holistically as embracing material, relational and spiritual deprivation. 'The Spirit of the Lord is on me, for he has anointed me to preach good news to the poor.'⁵⁹ This cannot be reduced to a purely spiritual poverty. James equates wishing a person well without satisfying their material needs with a dead faith.⁶⁰ It is poverty in all its dimensions which calls forth God's compassion, and should call forth ours. Many accept that the real problem of inequality is multifactorial socioeconomic deprivation.⁶¹ As Christians we will want at every point to highlight the spiritual dimension as well.

Of course, government is limited in what it can do about deprivation in this holistic sense. But even material poverty is only tangentially addressed by the status discrimination approach of the Equality Act. Race is clearly a factor, but so are class, dysfunctional home background, educational opportunity, lack of an incentivising welfare system, poor housing, poor access to healthcare, global trade inequities and much more. Law undoubtedly has a role to play in addressing these, but the problem cannot be solved by a single statute. The existence of a 'comprehensive' Equality Act should not blind anyone to the fact. Is this a challenge for most of us who are comfortable with middle-class compromises over issues of social deprivation? Is it easier for us – and our agnostic humanist neighbours – to get agitated about the legal rights of a small number of affluent homosexual men or the absence of women in corporate boardrooms than the massive number of the severely deprived? Carl Trueman is surely correct to pour scorn on a New Left political class that has shifted its concern from material issues to psychological categories, and on news media that are more exercised by a perceived racist comment than scenes of poverty and famine.⁶²

So the challenge here is to stay focused on problems of material, relational and spiritual deprivation in the face of a supposedly comprehensive equality law, which is actually nothing of the kind.

Conclusion

Christians should be positive about equality law. Equality is securely rooted in the Christian narrative, because ultimately it is rooted in the character of God. All human beings have an 'inner glory' (Kierkegaard) given by – and reflective of – God. But our Christian conception of equality opposes the homogenisation and relativism of equality culture. It keeps reminding us of the awful extent of spiritual, relational and material deprivation caused by and suffered by human beings. And above all, unlike our agnostic fellow-citizens, we live in the hope of a new order in which our feeble and flawed attempts to secure 'equality' in the present age will be drowned out by the triumphant harmonies of heaven.

59 Luke 4:18. 60 Jas. 2:3–4; 14–17.

61 See Stuart White's great little introduction: *Equality*, Polity, 2007.

62 Carl Trueman, *Republicrat*, P&R Publishing, 2010, p.17.

Julian Rivers is Professor of Jurisprudence and Warden of Wills Hall in the University of Bristol. He has published The Law of Organized Religions: between Establishment and Secularism (OUP, 2010) and is an Editor-in-Chief of the Oxford Journal of Law and Religion.

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